

Studies in English, New Series

Volume 5 *Special American Literature Issue*,
1984-1987

Article 26

1984

The House of the Seven Gables: Hawthorne's Legal Story

Brook Thomas

The University of Massachusetts, Amherst

Follow this and additional works at: https://egrove.olemiss.edu/studies_eng_new



Part of the [American Literature Commons](#)

Recommended Citation

Thomas, Brook (1984) "The House of the Seven Gables: Hawthorne's Legal Story," *Studies in English, New Series*: Vol. 5 , Article 26.

Available at: https://egrove.olemiss.edu/studies_eng_new/vol5/iss1/26

This Article is brought to you for free and open access by the Studies in English at eGrove. It has been accepted for inclusion in Studies in English, New Series by an authorized editor of eGrove. For more information, please contact egrove@olemiss.edu.

THE HOUSE OF THE SEVEN GABLES:

HAWTHORNE'S LEGAL STORY

BROOK THOMAS

THE UNIVERSITY OF MASSACHUSETTS, AMHERST

In 1851-1852 William Wetmore Story, later to become Hawthorne's friend in Rome and whose statue of Cleopatra Hawthorne helped make famous in *The Marble Faun*, published a two-volume account of the life and letters of his father, Justice Joseph Story, a distinguished professor of law at Harvard, the foremost legal scholar of his day, and a member of the Supreme Court from 1811 till his death in 1845. Describing his father physically, he wrote: "The muscular action of his face was very great, and its flexibility and variety of expression remarkable. Its outward form and feature seemed like a visible text, into which every thought and emotion translated themselves,—a luminous veil, which moved with every vibration of the inward life. His face was a benediction. Through it shone a benign light, whose flame was fed by happy thoughts and gentle desires....while he spoke, his face was haunted by a changeful smile, which played around it, and flashed across it with auroral light."¹ At almost the same time, Hawthorne created his fictional Judge Pyncheon of *The House of the Seven Gables* who also has a variety of expression and a face that can be read like a visible text. When the veil is lifted on Judge Pyncheon's face, however, it reveals not "the genuine benignity of soul, whereof it purported to be the outward reflection" but something "cold, hard, immitigable, like a daylong brooding cloud" (119).

Although Hawthorne's description could be read as a response to Story's, the dates of composition rule out any direct influence. Nonetheless, comparing the two helps us to understand how deeply Hawthorne's portrayal of his judge is rooted in his times. The description of Story is not merely that of a respectful son honoring a famous father; it is pervaded by the metaphors used to combat a powerful anti-judicial sentiment in antebellum America.² Confronted by complaints from Jacksonian Democrats that judges too often made political decisions benefitting a wealthy elite, defenders of the profession responded with an image of the judge as a disinterested defender of the republic's central principle, rule by law. No other national judge of the time, with the possible exception of John Marshall, was cited as

a living monument to that principle more often than Joseph Story.

What I want to do in this essay is use the lens of Hawthorne's fiction to look at a segment of American legal history at the same time that I frame Hawthorne's portrait of Judge Pyncheon within the period's legal history. In the first section, I will detail Story's participation in Salem's most famous murder case, a case Hawthorne used as a model for *The House of the Seven Gables*. In the second section, I will look at Story's participation in two landmark cases as a way of better understanding his legal ideology and how Hawthorne's fiction challenges it. In the final section, I will examine the politics of Hawthorne's aesthetics, for despite a radical potential in his work, Hawthorne, in his reaction to the same market conditions that helped to shape Story's conservative legal ideology, lapses into a conservatism of his own. My underlying assumption, then, is that Hawthorne's fiction and Story's legal opinions are social texts, which read together allow a symptomatic reading of their age.³

II

The most obvious model for Judge Pyncheon remains Charles W. Upham, the Salem Whig politician Hawthorne felt was responsible for his removal from the Custom House. But at least one of Hawthorne's contemporaries recognized enough allusions to Justice Story to write on the flyleaf of a first edition of *The House of the Seven Gables*:

There seems no doubt that Hawthorne, from some pique or other, has to a sufficient extent to have annoyed Judge Story not a little, had he lived to read these pages, though not enough to ground an action of libel on, introduced very unpleasant allusions to the late Mr. Justice Story in this volume. We know that in preceding work, Mr. H. treated some very respectable old people in Salem, who had incurred his displeasure, in a similar way; & there is therefore nothing strange in this attack. Probably, Mr. H. having been a Revenue officer in the district of which Judge Story had jurisdiction, some ill-feeling arose out of their official intercourse. These instances, of a vague, undefined resemblance, are numerous, though unconnected as a whole. There was never in N. England that I can learn of, but one *Pyncheon* family and almost the last (female) descendant of it, Judge Story married. Judge Story & a Mr. Crowninshield were nephews of the late Mr. White, a wealthy gentleman of Salem whom the latter murdered by night, destroying his will &c. (see p. 335) Crowninshield was hung, however. The

sketches in Ch. VIII.⁴

That a contemporary would think of Justice Story when reading about Judge Pyncheon is not surprising. Story was after all, like Hawthorne, a Salem man and its most famous judge. His first wife, who died shortly after their marriage, was indeed a descendant of the Pyncheon family which felt so unfairly attacked by Hawthorne's use of its name in his fiction. Story's second wife, the daughter of Judge William Wetmore, was a distant relative of his first. An equally interesting observation is that the connections between Story and Judge Pyncheon are too vague to ground an action of libel. First of all, it explains why, even if it were my main purpose to do so, I could not establish conclusive evidence for the connection. Second, it suggests a pattern we repeatedly find in Hawthorne's fiction. At the same time that he suggests a historical connection, he uses the cover of his fiction to make certain that he could never be convicted of making it. His book is, after all, a romance not a real history, "having a great deal to do with the clouds overhead, than any portion of the actual soil of the County of Essex" (3).

So warned, readers continue to return to the history of the county of Essex to understand Hawthorne's fiction, and the murder of Captain Joseph White in 1830 is a part of that history often cited. George Parsons Lathrop, Hawthorne's son-in-law, wrote in his introduction to *The House of the Seven Gables*: "In all probability Hawthorne connected with [the Pyncheon murder], in his mind, the murder of Mr. White...."⁵ Thus, our contemporary reader's allusion to the trial is not unusual. Nor is it unusual, given the sensational aspects of the case, that he himself offers a fictionalized account of the case, an account influenced no doubt by his reading of Hawthorne's fiction. As we shall see, Story and Crowninshield were involved, but they were not nephews of the victim.

The White murder case has been described by someone not interested in making a point about Hawthorne as resurrecting "in the early years of the Nineteenth Century the apparatus of the Eighteenth Century romance."⁶ In April 1830, Captain White, a rich Salem merchant on whose ships Hawthorne's father had served, was found murdered in his bed. The town was in an uproar, fearing that life and property of respectful citizens were no longer safe. A committee of vigilance was formed, made up of twenty-seven leading citizens. Its vigorous pursuit of the murderers added to the climate of crisis, as critics recalled the witch hunts two hundred years earlier. Some sus-

pected White's servants who reported the murder. Some thought that White, eighty-two, had been involved in a love affair and was the victim of a jealous rival. Others speculated that a Black committed the crime in revenge for the large profits White had made from the African slave trade. Even White's lawyers were suspected. Eventually, two sets of brothers, the black sheep of two prominent Salem families, Frank and Joseph Knapp and Richard and George Crowninshield, were accused of the murder.

Three years earlier, Joseph Knapp, a captain of one of White's ships, had married Mary Beckford, the beautiful daughter of White's niece and long-time housekeeper. Accusing Knapp of fortune hunting, White had removed him from command and cut his favorite Mary out of his will. Mistakenly believing that, if the will of Captain White could be destroyed, his mother-in-law would inherit half the fortune, Knapp hired Richard Crowninshield to murder White while Knapp, still having the run of the house, would steal the will. Crowninshield executed the murder, and Knapp did steal a document, but the wrong one. White's real will was kept safe by his lawyers. In the real will the major inheritor of a great fortune was the once-suspected nephew Stephen White, a Massachusetts State Senator and also Joseph Story's brother-in-law.

Although Story had a personal stake in the trial, he stayed to the background as controversy about the case made news throughout the country. What he did do was arrange for his friend, Daniel Webster, to aid the prosecution. Thus, the White case involved an alliance that was one of the shaping forces in antebellum law, an alliance combining the oratorical skill of Webster and the legal expertise of Story. Because of numerous complications, including Joseph Knapp's confession in exchange for immunity, the suicide of Richard Crowninshield, the death of presiding Chief Justice Parker by apoplexy, and Joseph's loss of immunity by refusing to testify at his brother's trial, all of the power of that alliance was needed to bring about a conviction.

Indeed Webster was given personal credit for the conviction of Frank and Joseph Knapp, George Crowninshield having been granted an acquittal. His concluding speech at Frank's trial has been called "the greatest ever delivered to an American jury." Not all of those impressed by its power were impressed by its fairness. One critic went so far as to call Frank's conviction "an example of judicial murder."⁷ Enough Salem residents were outraged at Webster for help-

ing to hang two members of a prominent Salem family that he was never again warmly welcomed in their town. Others were understandably upset at the irregularity of having Webster brought in from outside to serve the prosecution, especially since, contrary to his official denial, he was paid \$1,000 by Story's brother-in-law, the same fee paid to Crowninshield to commit the murder. Salem residents would also have known that Webster, who stayed at White's home during the trial, received a gift of a yacht from White, that the half-brother of Webster's first wife married one of Story's nieces, and that Webster's son married another. That Webster was allowed to argue the case for the prosecution seems even more unfair when we remember that Robert Rantoul, the young Jacksonian Democrat who would later battle Story over the codification of Massachusetts law, served as assistant for the defense, but contrary to the defendants' wishes, was not allowed to argue their case because he was not a member of court. The Webster v. Rantoul opposition points to a possible political aspect of the case that historical distance too often lets us forget.

As any resident of Salem would have known, Story might have had more interest in this case than his nieces' inheritance. Early in his life he had been an ally of the Crowninshields, a rising merchant family which joined the Jeffersonian party to challenge the staunchly-Federalist merchant establishment in Salem. But the alliance had turned sour. In 1808 Story maneuvered a Crowninshield out of a seat in Congress. Further, if the local Salem diarist Dr. William Bentley can be trusted, Story had risen in the State house by depriving the same Crowninshield of the speakership and had replaced him as president of the Salem Merchants Bank. Bentley referred to Story, the man later honored as an impartial lover of justice, as "the Ambitious wretch." Even in his role as judge, Story continued to be involved in Crowninshield family affairs. In 1817 he sat on the Supreme Court as it decided the bankruptcy case of *Sturgis v. Crowninshield*, disallowing a Crowninshield's attempt to discharge past debts. Other ways in which Story might have antagonized the Crowninshields are suggested in a letter from Mrs. Crowninshield to her husband, the Secretary of the Navy in Washington: "Yesterday afternoon I had the pleasure of seeing Judge Story....He told me you may be home in May....He likewise says you have fine times with the girls in the house...[I also understand there are] so many ladies that almost every night you send for music and dance. Now you have never told me this and I have many times asked you how evenings you

sometimes recollect you have a wife at home peering over her knitting and two daughters studying their lessons by her side" (Dunne, 158). Finally, as the 1830 trial proceeded, another Crowninshield lost his race for Congress, the outcome probably affected by publicity from the trial.

In all of this Hawthorne could hardly have been a neutral observer: the Crowninshields were his distant cousins. Nonetheless, he does not appear to have been too upset. In a letter to his relative John Dike, he does not mention the Crowninshields at all and, as to the Knapps, he writes: "For my part, I wish Joe to be punished, but I should not be very sorry if Frank were to escape." For my part, I do not want to suggest that Story had evil motives, although his role in hiring Webster does raise ethical problems. The most obvious interpretation of Story's low profile during the trial is that he wanted to maintain judicial integrity by avoiding public involvement in a case personally affecting his relatives. If he had wanted to be certain of influencing the case, he had a perfect opportunity. Governor Levi Lincoln offered him Isaac Parker's seat as Chief Justice. Story refused, however, citing fears that President Jackson would choose his successor to the United States Supreme Court. Instead, after consulting with Webster, Lincoln decided upon Lemuel Shaw, later to become Herman Melville's father-in-law. Shaw reluctantly accepted the post he would occupy for thirty years, but he disqualified himself from sitting on the White case because he had served as the attorney for one of those suspected before the Knapps and the Crowninshields were arrested.

What is important in terms of Hawthorne's use of the White murder case is not to assert, almost certainly incorrectly, that a famous judge committed wrong-doings to reap personal gain and to get rid of past enemies, but to suggest how Hawthorne's imagination transformed historical material into a fictional account of a dispute between and within two Salem families. As we examine that transformation, it is wise to keep in mind Hawthorne's warning to read his work as a romance, not history—a warning echoed by George Parsons Lathrop who cautions, "that such resemblances as these between sundry elements in the work of Hawthorne's fancy and details of reality are only fragmentary, and are rearranged to suit the author's purposes." In fact, it is precisely the political implications of that rearrangement along with Hawthorne's desire to deny the historical ground of his fiction that concern me.

When Hawthorne first makes obvious use of the White murder in his fiction the result is a story quite different from his later romance. In "Mr Higginbotham's Catastrophe" (1834) the murder of a rich merchant is plotted by three men: a white, a Black, and an Irish servant. The first two lose courage, leaving the Irishman alone to commit the deed. The hero of the story interrupts him, saves the merchant, and marries the rich and beautiful young niece. In recalling the original suspicion directed against a Black or a servant as White's murderer, Hawthorne's tale confirms the racial and class prejudices of elite Salem. His use of material from the White case in *The House of the Seven Gables* is both more accurate and more radical.

Some points of similarity between the romance and the historical accounts of the murder are obvious. Unlike in the short story, where a servant plots a murder against a rich man, in the romance, as in the Salem murder, the alleged plot occurs within the rich man's family and is over inheritance. Instead of the poor committing crimes against the propertied, the propertied commit crimes against the poor. In addition, there is the confusion of wills and lost documents. There is the possibility of a niece inheriting a large fortune. There is a judge who dies of apoplexy. There is the possibility of someone avoiding a stiffer penalty because of "the high respectability and political influence of the criminal's connection" (22). And, of course, there is Judge Pyncheon, who like Justice Story presides over meetings of bank directors, who like Justice Story has considerable financial investments, and who like Justice Story is not above using the law to protect his private interests.

But to understand better why one of Hawthorne's contemporaries felt that Story would have been so upset by Hawthorne's portrayal of Judge Pyncheon, we need to go beyond the Salem murder case and look at a part of legal history in which Story actively participated as a judge. These cases comprising this history are not as attractive to a writer of romances as a sensational murder case, and there is no reason to assume that Hawthorne knew more about them than the average educated New Englander. To be sure, he might have discussed some of the cases with his trusted friend, George Hillard, who along with Charles Sumner was Story's most prized pupil. But the point is not to prove Hawthorne's knowledge of specific cases. The point is that looking at these cases makes Story's opinions on the law accessible to us and lets us see the legal ideology against which Hawthorne was reacting. One of the most important cases Story sat

on was *Dartmouth College v. Woodward* (1819).

III

The Dartmouth College Case arose over a dispute between the college and the state legislature. The legislature had amended the school's charter to make it more responsive to state needs in a manner similar to Jefferson's proposed University of Virginia. Powerful members of the college wanted to preserve its elite, private nature. With Webster arguing the case for the trustees, the U. S. Supreme Court held the Dartmouth Act invalid under the impairment-of-contracts clause of the Constitution.

The case was welcomed by the rising commercial class because it established the principle of the vested rights of corporations. Corporations of all kinds could appeal to their original charters as sacred contracts under the law not to be altered by legislative attempts to control them. Significantly, it was Story's concurring opinion, not Marshall's opinion of court, that explicitly extended this corporate privilege to private business enterprises.

What accounts of the case too often leave out is Story's personal stake in the outcome of *Dartmouth College*. In a preliminary ruling on the case, Story was careful to make a clear distinction between public and private corporations, since a better case could be made for legislative control over public corporations than private ones:

[A] bank, whose stock is owned by private persons, is a private corporation, although...its objects and operations partake of a public nature. The same doctrine may be affirmed of insurance, canal, bridge, and turnpike companies. In all these cases, the uses may, in a certain sense, be called public, but the corporations are private...(Dunne, 181)

What Story did not mention was that the Merchants Bank, of which he was president, perfectly fit this description. Nor did he mention that Harvard College, to whose board of overseers he had just been appointed, would be protected from legislative interference by the *Dartmouth College* decision.

Modern readers immediately recognize a conflict of interests. But Gerald Dunne, one of Story's biographers, warns us against applying our own standards to Judge Story. "No one," he writes, "seemed particularly concerned that Story held both judicial and corporate office" (Dunne, 141). Story's ability simultaneously to hold positions

as judge and bank president depended on the widespread belief at the time in a guardian class of virtuous, disinterested men who could keep public and private interests separate.

Justice Story firmly believed that "There can be no freedom where there is no safety to property." It was the task of the guardian class made up of disinterested lawyers and judges to protect the rights of property against those forces which would violate them. To Story, the major threat to property was the legislature: "That government can scarcely be deemed free, where the rights of property are left solely upon the will of a legislative body, without restraint."¹¹ *Dartmouth College* was such a triumph for his principles because it reaffirmed judicial over legislative control of the economy. In a letter to Chancellor James Kent after the decision, he wrote, "Unless I am very much mistaken, these principles will be found to apply with an extensive reach to all the great concerns of the people, and will check any undue encroachments upon civil rights, which the passions or the popular doctrines of the day may stimulate our State Legislatures to adopt."¹² In asserting the power of the rational, impartial guardian class to rule over the irrational, partial masses as represented by state legislatures, *Dartmouth College* had helped to solve the basic problem of government as Story saw it: "how the property-holding part of the Community may be sustained against the inroads of poverty and vice."¹³

Hawthorne's fictional work radically challenges Story's vision of a just society because it questions the existence of a specially-trained, professional elite that can disinterestedly uphold the law. Vice in *The House of the Seven Gables* is not coupled with poverty, but with property. The guardian class is as irrational and partial as the popular masses. Recalling the witch trials, the book's narrator remarks: "The influential classes, and those who take upon themselves to be leaders of the people, are fully liable to all the passionate error that has ever characterized the maddest mob" (8). Judges, if we are to judge from Judge Pyncheon, seem especially inclined to let personal ambition sway their judgments. And judges, if we are to judge from Justice Story, seem especially inclined to minimize the passionate error of judges by appealing to universal legal principles. In a lecture at Salem in 1828 on the Puritans, Story argued that behind the irrationality of the witch trials lay beliefs "which had the universal sanction of their own and all former ages;...which the law supported by its mandates, and the purest judges felt no compunctions in enforcing."¹⁴

Of course modern readers do not need Hawthorne to point out that

the guardian class is not as disinterested as it claims. Without having first read *The House of the Seven Gables*, we can still, I hope, note the contradiction when—on the page after Story's most sympathetic legal biographer praises him for believing in "an independent guardian class of virtuous lawyers and judges"—he details the subtle manner in which Story used Webster "to influence Congress to enact legislation favorable to his conservative designs."¹⁵ What Hawthorne's fiction can do, however, is offer an alternative to the legal history we are often told. For instance, Story's other biographer defends the Story-Webster alliance by arguing that it was an accepted practice: "It should be emphasized that the relationship was compatible with then contemporary standards for judicial interests and behavior. No one was particularly scandalized by Webster's legislative activity on Story's behalf, nor by Webster's action in requesting Story's intercession with the reconstituted New Hampshire court to secure a clerkship for an associate" (Dunne, 161). What Hawthorne's fiction shows is that some contemporaries were indeed scandalized by the guardian class's claim of judicial impartiality when judges continually made decisions benefitting the class to which they belonged. In fact, Hawthorne's Judge Pyncheon even suggests the Story-Webster alliance, since the Judge has resemblances not only to Story, but also, as Henry Nash Smith has pointed out, to Webster.¹⁶ Certainly, the Judge's political aspirations draw attention to the contradiction involved when Story and his friends claimed that the Jacksonian call for elected judges would politicize the judiciary.

Nonetheless, Story's inability to see that his notion of the judiciary was as political as the Jacksonians' was the result of neither stupidity nor willful deceit. It results from the radical separation between the public and private spheres accepted by most people of that time—Democrats and Whigs alike. Defenders of the impartiality of the judiciary were not so naive as to believe that judges were without private beliefs or interests. But they did believe that when a man delivered his public opinions as a judge he could, to a large extent, suppress his private opinions. Similarly, private business matters could be kept separate from public policy matters. What is important to see is that the same distinction between private and public which justified Story's judicial impartiality was written into American corporate law by Story himself. The result is not at all impartial.

Under traditional common law, private corporations with a public function were bound by so many charter obligations to the state

and public as to make them as much an instrument of common welfare as a vehicle for private enterprise. But with the transformation in America from an agrarian to a market economy, the status of the corporation changed. In underdeveloped America bridges, turnpikes, and canals needed to be built to help develop the land. In a capital-poor country, public funds were not easy to find. The solution was to transform common law to meet the demands of a dynamic, market economy. Traditional common law, based on a static agrarian economy, favored the maintenance of the status quo by holding to the principle that the first owner in time was the first in right. But in the first years of the nineteenth century, property laws were reinterpreted to favor the first developer. Most notably, special privileges were granted to new corporations so that private investors would risk capital in projects beneficial to the entire public. The principle of the vested rights of corporations established in *Dartmouth College* was felt to be essential to the welfare of the country by pro-development people such as Story because it assured investors of the legal consequences of their investment. Once the terms of a charter were established, they could not be altered, no matter how the economic situation might change.

The problem with the second stage was that it could discourage further development by granting too many privileges to the first developer. Too often public-service organizations turned into private, profit-making organizations, making the theory justifying their special favors outdated. Under the new conditions, Story's distinction between public and private gave such corporations the benefits of a public corporation without its obligations. Thus, just as the old agrarian laws had favored those already possessing wealth, so, after an initial redistribution of wealth, did the new laws. As a result, the law was once again reinterpreted and transformed, this time to encourage competition by undermining the privileges granted a generation earlier.¹⁷

The case pointed to as marking the transformation from the second stage of law to the third is *Charles River Bridge v. Warren Bridge* (1837). The extent to which Story served the interests of those who benefitted from the second stage is clear when we compare his involvement in this case to his involvement in *Dartmouth College*. In 1785 the state of Massachusetts had granted a corporation an almost exclusive franchise to build a toll bridge across the Charles River. By 1827, it was collecting tolls of \$30,000 a year. In an effort to spark

competition, the legislature chartered the new Warren Bridge Company, which promised to be toll free in six years. The Charles River Bridge, loosely connected with Story's Harvard College, claimed that the new bridge violated its charter and hired Webster to argue its case when it went to the Supreme Court in 1837. But this time Webster lost, and Story was forced to write a dissenting opinion. The opinion of the new Jacksonian Chief Justice Taney sounded to Story much like Holgrave's reforms would have sounded to Judge Pyncheon. Just as Holgrave proposes that each generation should be able to restructure society to serve its present interests, so Taney ruled that considerations of public interests at the present time could overrule the original conditions of a corporate charter. Story's defense of the sanctity of contract, on the other hand, recalls the Pyncheons' desire to have the present generation bound by the wills of the past.

Story took his defeat hard. He wrote to his wife, "A case of grosser injustice...never existed. I feel humiliated" (Dunne, 360). That the highest court in the land had agreed to give up its regulatory control to state legislatures seemed to Story a threat to the republic. His gloom was confirmed even before the Court adjourned for the year when the Panic of 1837 swept the country. These public setbacks along with the confirmation of a permanent illness to his wife caused Story to consider retiring from the bench and withdrawing to full-time teaching or private business. In the public sphere Jacksonian policies seemed to have triumphed, and America seemed to have given itself over to irrational control.

Hawthorne once again challenges Story's political vision, which saw Jacksonian policies as the threat to the country. He does so by offering an alternative to the version of history Story adheres to. Although Story defended his legal principles as eternal, Hawthorne, by recording the three stages in the transformation of American property law with remarkable accuracy, shows that some of those principles were of fairly recent origin. According to Hawthorne's fictionalized Salem history, the country was founded on the agrarian principle of "first in time makes first in right," a principle giving Matthew Maule the right to his land, land he has cleared with his own hands. That original agrarian principle is violated, however, when Colonel Pyncheon asserts his power in order to take over Maule's land, just as the rising commercial class manipulated the law to increase its power. The clearly established ascendancy of the Pyncheons marks the start of a new era similar to the new era marked by the changeover

in the presidency of Salem's Merchants Bank. "Our Merchant's Bank," lamented Dr. Bentley, "by passing from the Crowninshield interest to the Story...has not the same friends" (Dunne, 142). Thus, Hawthorne's portrayal of how the Pyncheons first bend the law to accumulate property and then appeal to it to protect their property might have reminded historically—aware residents of Salem of how Story and his allies used a rhetoric about the eternal sanctity of property rights to protect property only recently acquired. Contrary to Story's version of history, then, Hawthorne's version allows us to see the Jacksonian threat to the propertied class not as a threat to basic American values, but as an attempt to return to America's original agrarian values, just as the radical reformer Holgrave threatens to return the Pyncheon property to its rightful owners. There is, to be sure, a certain nostalgia for a democratic, agrarian America that never really existed in this version of American history, a nostalgia also found in Jacksonian politics.¹⁸ Nonetheless, Hawthorne's history does place Story's claim that he was protecting eternal rights in proper perspective and would clearly have upset the judge, just as Hawthorne's explanation of public interests in terms of private ones would have done.

In his portrayal of Judge Pyncheon, Hawthorne makes it clear that public and private interests are connected, that merely keeping one's beliefs private does not mean that they do not affect one's public role. For Hawthorne, to know the public man one must know the private man:

As regards the Judge Pyncheon of to-day, neither clergyman, nor legal critic, nor inscriber of tombstones, nor historian of general or local politics, would venture a word against this eminent person's sincerity as a christian, or respectability as a man, or integrity as a judge, or courage and faithfulness as the oft-tried representative of his political party. But, besides these cold, formal, and empty words of the chisel that inscribes, the voice that speaks, and the pen that writes for the public eye and for a distant time—and which inevitably lose much of their truth and freedom by the fatal consciousness of so doing—there were traditions about the ancestor, and private diurnal gossip about the Judge, remarkable accordant in their testimony. It is often instructive to take the woman's, the private and domestic view, of a public man. (122)

But if Hawthorne's emphasis on the private undercuts Story's ideology of disinterested public service, it reflects another ideology of the time, one shared by most of the period's writers. Public questions

for Hawthorne can almost always be explained by reducing them to a private, individual level. For him, to write for the public eye inevitably involves distortion. Truth is to be found in the private. So, two years later when he took up "the pen that writes for the public eye and for a distant time" to compose the campaign biography of Franklin Pierce, he emphasized his intimate knowledge of his old friend's private character. For Hawthorne, politics was basically not a question of issues, but of character.¹⁹

In *The House of the Seven Gables*, for instance, the corruption Hawthorne exposes in Salem can be explained by the corrupt heart of Judge Pyncheon or the private greed of the small group of politicians who would nominate him governor. When the Judge suddenly dies, Maule's curse is magically lifted and the book can come to what seems to be a happy ending. Thus, while Hawthorne condemns his Puritan ancestors who participated in the witch trials, he retains their worldview that explains social contradiction in terms of a conspiracy theory. If we turn once again to my comparison between Justice Story and Judge Pyncheon, we can see how inadequate this view is. Even though Justice Story served the same elite interests as Judge Pyncheon and, like him, may have disguised personal ambition behind a benevolent smile, he was not evil. He might not have radiated the light his son claimed, but he did not have a heart which, like Judge Pyncheon's, threw "a great black shadow over everything" (306). The way in which judges, even honorable ones, can help perpetuate social injustice needs a more complex explanation than Hawthorne's fiction can provide, for ultimately Hawthorne diverts our attention from the historical perspective his romance offers to an exploration of the universal character of the human heart, including his own.

No matter how telling Hawthorne's criticism of the legal profession's ideology might be, it loses some of its power because Hawthorne, the judger of judges, in his heightened self-consciousness hints that he is not exempt from his own criticisms. If judges, like Story, relied on a distinction between the public and private self, so did Hawthorne, who referred to his fiction as a veil covering his private self. It was, he pleaded, the public self that readers should judge. Hawthorne's image of the self he tried to sell to the public shares an important similarity with the public image judges tried to project. In antebellum America judges were not the only professionals claiming to be above the squabbles of local politics; artists made the same claim. Hawthorne, in fact, made precisely this claim in protesting his

dismissal from the Custom House. Appointed an artist, he should not, he felt, be the victim of petty politics.²⁰ Yet, as readers of "The Custom-House" and *The House of the Seven Gables* knew and should know, Hawthorne's works can be very political on a local and even, I have argued, national level. Nonetheless, like Judge Pyncheon, Hawthorne conceals his politics behind a public role. Also like Judge Pyncheon, Hawthorne covers up a gloomy disposition by putting forth a sunny face to the public in *The House of the Seven Gables*. And that forced sunshine, like the Judge's sunny smile, is in part motivated by commercial interests, as Hawthorne, hopeful of increased sales, tried to open up commerce in both senses of the word with his consuming public.²¹

The way in which both artists and judges reacted to the conditions of the new marketplace explains Hawthorne's similarities with his judge better than any universal theory about the darkness of the human heart, for as much as Hawthorne distrusted Story's guardian class of lawyers and judges, he distrusted the class about to replace it even more. In fact, the major inaccuracy in Hawthorne's version of history is that the values of the class to replace the Pyncheons would not be the somewhat nostalgic and idealized agrarian values of Phoebe and Holgrave, but ones even more acquisitive and selfish than those of the Whig elite, values represented by the young consumer of cookies, Ned Higgins.

IV

Describing why Story's position as a bank president exemplified the transformation of economic orders, Dunne offers a valuable description of the new market conditions that both judges and artists had to face:

The rise of banking cut the fabric of tradition with an especial sharpness. Though the significance of the change was barely grasped and rarely articulated, the growing importance of banking amounted to a revolution in the traditional system of credit, which forced profound changes in outlook and values. Sharply challenged were the old agrarian views under which gold and silver, like fields and flocks, were the true essence of wealth. Rather, wealth was changing in form to the intangible—to paper bank notes, deposit entries on bank ledgers, shares in banks, in turnpikes, in canals, and in insurance companies. More important, perhaps, debt was no longer necessarily the badge of improv-

idence and misfortune. And from the creditor's point of view debt, in the form of bank notes or bank deposits, became an instrument of power. (Dunne, 142-143)

In the new economy, the old theory that value was determined by the inherent properties of an object gave way to a subjective theory of value, in which the value of an object was determined by laws of supply and demand. In capital-poor but land-rich America, the land itself became just another commodity, fluctuating in value according to market conditions, the enterprise of developers, and the confidence games of speculators.²² That in *The House of the Seven Gables* deeds and wills become as important as possession of the land itself in determining ownership is one way Hawthorne's fiction reflects the new economic reality in which paper documents and notes become the measure of wealth and power.

Since they could use the new system of credit to gain power, Justice Story and his allies, like the Pyncheons, initially benefitted from this new order. It was their enemies the Jacksonians, with their legacy of Jeffersonian agrarianism, who were most nostalgic about the lost theory of value and who responded with an attack on the Monster Bank. But even Story could not be comfortable with a subjective theory of value. It made the economic situation too unpredictable. If the market were, as Karl Polanyi terms it, "artificial,"²³ any cunning person might wrest wealth from those in power, a possibility thoroughly explored in Melville's *The Confidence Man*, in which legitimate selling becomes indistinguishable from artful swindling. For Story, the answer to the instability of the marketplace was to be found in the monumental quality of the law, just as the Pyncheons sought an answer to the flux of time in monumental buildings. Constructed according to the solid eighteenth-century values of perspicuity, elegance, and logic, the law was to provide a firm foundation to order an economy which seemed to defy all laws because its only control was the formless passions of the masses. Most important in a time of flux, the edifice of the law housed eternal truths. Lawyers and judges were of the guardian class, because, specially trained in the law, which Story granted the status of a science, they had privileged access to those eternal truths.

Hawthorne, of course, reminds us that the legal system's foundation was not so stable, that its science was not so rational, and that—if the Pyncheons' commercial transactions are an example—its definition of legitimate commerce was not so just. Nonetheless, judges of the period were not the only ones to react to the new economic conditions

by seeking eternal truths. If public law did not house stable truths, they must be sought elsewhere. Commercial times, Emerson argued in "The Transcendentalists" give rise to Idealism.²⁴ Caught in a market economy which rendered the value of things subjective, turned Nature itself into a commodity, and seemed beyond man's ability to control, men needed to seek stable truths in transcendental laws. For Emerson it was the imaginative artist's special role to see those transcendental truths, just as for Story it was the trained lawyer's to discover eternal truths in the law.

By making this comparison, I do not want to minimize the difference between the Transcendentalists and the legal profession. Although Story started his career as a poet and continued to write poetry all of his life and although he strongly urged his law students to study literature as a source of eternal truths, he was uncomfortable with nineteenth-century poets. His models were the eighteenth-century figures of Pope and Johnson, whose balance and reason expressed "truth," not the "ideal sketches of the imagination"²⁵ of modern poets. Story's eternal truths were "public"; the Transcendentalists' "private." But despite their differences, both Story and Emerson's social visions depended on keeping the public sphere separate from the private. Story wrote a poem called "The Power of Solitude" and then embarked on a public career. Emerson, finally bringing himself to talk on the Fugitive Slave Act, starts his speech: "I do not often speak to public questions;—they are odious and hurtful, and it seems like meddling or leaving your work."²⁶ To compare Hawthorne's conservative Judge Pyncheon with his radical artist Holgrave is to discover the hidden affinities between judge and artist that I have suggested.

Holgrave, who champions change and flux, would seem to be the total opposite of Judge Pyncheon, who shares the lawyer's love of order and stability. Holgrave's friends—"reformers, temperance-lecturers, and all manner of cross-looking philanthropists"—according to Hepzibah "acknowledged no law and ate no solid food, but lived on the scent of other people's cookery" (84). Nonetheless, Holgrave's profession as an artist betrays his affinity with the Judge. In his portraits he is able to fix flux—even the varying expression of the Judge—to capture the essence of a personality. Holgrave can live in the flux and embrace it because, like the Transcendentalists, he believes in the artistic individual's access to fixed, permanent laws. Although Holgrave made Phoebe uneasy because he "seemed to

unsettle everything around her, by his lack of reverence for what was fixed," Hawthorne immediately adds "unless, at a moment's warning, it could establish its right to hold its ground" (177). As Hepzibah says, "I suppose he has a law of his own!" (85). While Holgrave's dislike of the Judge shows how the artist's private law often conflicts with the judge's public law, his conversion to conservatism at the end of the book shows how the artists' desire to find eternal truths can lead to political conservatism.

This mixture of conservatism and radicalism that we find in Hawthorne's work can be explained in part by the mode of writing by which he chooses to present himself to the public—the romance. If, as de Tocqueville observed, the discourse of the law at that time imparts—or attracts men with a predisposition to—conservative "habits of order, a taste for formalities..., [an] instinctive regard for the regular connection of ideas, which naturally renders them hostile to the revolutionary spirit and the unreflecting passions of the multitude,"²⁷ the genre of the romance helps to determine—or is the most appropriate mode to express—Hawthorne's politics. Politicizing the generic work of Northrop Frye, Fredric Jameson has argued that the romance, by portraying conflict in terms of good and evil felt as magical forces, disguises social and historical causes of conflict. Of course, Hawthorne's work, which is not a pure romance but a novel-romance, does not completely disguise social and historical causes of conflict. As I have argued, it accurately portrays the stages in the development of antebellum economic law and through the Pyncheon-Maule conflict shows the class struggle involved. Nonetheless, as I have also argued, Hawthorne's fascination with the sensational, along with his tendency to personalize and see social conflict in terms of conspiracy, distorts the acute historical analysis that he offers.

Jameson goes on to argue that the precondition for the romance "is to be found in a transitional moment in which two distinct modes of production, or moments of socioeconomic development, coexist," such as in antebellum America when market capitalism started to replace the old colonial, agrarian order. He adds, however, that "their antagonism is not yet articulated in terms of the struggle of social classes, so that its resolution can be projected in the form of a nostalgic (or less often, Utopian) harmony."²⁸

Appropriately, Hawthorne's resolution of conflicts in *The House of the Seven Gables* has been read alternatively as nostalgic, Utopian, and even ironic.²⁹ It is nostalgic if we see the return of the property to

Brook Thomas

267

the Maule family as an idealized reassertion of democratic agrarian values, a yearning for a non-existent Edenic past. In this reading, Hawthorne's "romantic" ending reflects the inherent nostalgia in the Democratic alternative to Whig elitism. It is Utopian if we read the romance (as Hawthorne tells us to) as offering possible, if not probable, alternative visions to society and see Holgrave and Phoebe's proposed marriage as a destruction of class barriers and a union of idealism and practicality, a harmony not yet consummated, but one projected for a possible future. It is ironic if we see Hawthorne self-consciously undercutting his too obviously nostalgic or Utopian visions and suggesting, through Holgrave's conversion to conservatism and Phoebe's inheritance of a great fortune, that Maule's curse has not ended, but is starting all over again. But whether the ending is nostalgic, Utopian, or ironic, it saves the protagonists from confronting the world of commerce with which the rest of Salem has to deal. Watching the barouche carry Clifford, Hepzibah, Holgrave, and Phoebe to the country home of Judge Pyncheon are two men of the street:

"Well, Dixey," said one of them, "what do you think of this? My wife kept a cent-shop, three months, and lost five dollars on her outlay. Old Maid Pyncheon has been in trade just about as long, and rides off in her carriage with a couple of hundred thousand—reckoning her share, and Clifford's and Phoebe's—and some say twice as much! If you choose to call it luck, it is all very well; but if we are to take it as the will of Providence, why, I can't exactly fathom it!"

"Pretty good business!" quoth the sagacious Dixey. "Pretty good business!" (318-319)

Once again Jameson's discussion of the romance can help us understand what is at stake in Hawthorne's artistic retreat from business realities. This is Jameson's description of the end of Joseph von Eichendorff's *Aus dem Leben eines Taugenichts*:

It is because Eichendorff's opposition between good and evil threatens so closely to approximate the incompatibility between the older aristocratic traditions and the new middle-class life situation that the narrative must not be allowed to press to any decisive conclusion. Its historical reality must rather be disguised and defused by the sense of moonlit revels dissolving into thin air, and conceal a perception of class realities behind the phantasmagoria of *Schein* and *Spiel*. But romance does its work well; under

the spell of this wondrous text, the French Revolution proves to be an illusion, and the grisly class conflict of decades of Napoleonic world war fades into the mere stuff of bad dreams.³⁰

So too with *The House of the Seven Gables*, which transforms the class conflict of antebellum America into an imaginative vision "of the writer's own choosing or creation" (1). Alone with Phoebe in the garden, Holgrave exclaims:

Could I keep the feeling that now possesses me, the garden would every day be virgin soil, with the earth's first freshness in the flavor of its beans and squashes; and the house!—it would be like a bower in Eden, blossoming with the earliest roses that God ever made. Moonlight, and the sentiment in man's heart, responsive to it, is the greatest of renovators and reformers. And all other reform and renovation I suppose, will prove to be no better than moonshine! (214)

Later, as Holgrave and Phoebe acknowledge their love, they

transfigured earth and made it Eden again, and themselves the first two dwellers in it. The dead man, so close beside them, was forgotten. At such a crisis, there is no Death; for Immortality is revealed anew, and embraces everything in its hallowed atmosphere.

But soon the heavy earth-dream settled down again! (307)

Historical reality is but an earth-dream; the Edenic moment of romance, reality.

What our examination of the period's legal history should let us see is that paradoxically an important aspect of the historical reality from which Hawthorne retreats is a market system that made value "fictional." Hawthorne's attraction to imaginative romances is in part a nostalgia for a world in which "true" values would be tangible. His Judge Pyncheon is fully aware of how the new economy makes it possible to fictionalize one's "value." Talking to Hepzibah, the Judge describes how his Uncle Jaffrey concealed "the amount of his property by making distant and foreign investments, perhaps under other names than his own, and by various means, familiar enough to capitalists, but unnecessary here to be specified" (234). The type of wealth that Uncle Jaffrey had, though indicated only on paper, was of course real, yet Hawthorne, the writer of romances, wants to deny its power over him.

To be sure, it exerts complete power over the most powerful, practical man in Salem—Judge Pyncheon. The judge's pursuit of his uncle's missing property focuses on his quest for the deed to the mythical Maine land. It becomes his one castle in the air. From Clifford he demands "the schedule, the documents, the evidences, in whatever shape they exist, of the vast amount of Uncle Jaffrey's missing property" (235). But by the end of the romance, these documents turn out to be utterly worthless. In a legal system that since *Charles River Bridge* no longer upholds the sanctity of contract, the original Indian deed to the lands had "long been worthless" (316). It is of course appropriate that the secret to the whereabouts of the deed is the one "possession" Holgrave inherited from his ancestors. If the secret source of wealth is after all fictional, it has been controlled all along by our representative writer of romances. The writer controls the paper economy, not vice versa. Having arrived at such a vision, Hawthorne can close the book on the radical reforms that at first seemed so necessary if the faulty foundation of an unjust legal system were to be repaired.

The reader, however, can keep the book open since, despite his conservatism, Hawthorne has exposed contradictions in the legal ideology that are not to be dismissed by his invocation of the special privileges of the romancer. Hawthorne's ability to expose those contradictions depends to a large extent on the historical perspective he offers, a perspective in turn dependent in part on his particular biographical situation which made him a resident of Salem, a town whose historical development allowed it to produce as its most famous judge a man whose life traces the transformation of American law even more accurately than Hawthorne's fiction. That famous judge's involvement in Salem's most famous murder trial makes his legal biography an ideal text to compare to Salem's most famous writer's fictionalized version of Salem history. Interweaving these texts, we are in a better position to understand the ideological implications of both Joseph Story's view of the law and Nathaniel Hawthorne's view of art, a view which caused him to invoke the privileges of a romancer to retreat from the truly subversive potential of his own legal story.

NOTES

¹ William Wetmore Story, *Life and Letters of Joseph Story* (Boston, 1851), 2:552.

² Gerald Gawalt, *The Promise of Power* (Westport, Conn. 1979), passim.

³ The notion of a symptomatic reading comes from Louis Althusser. See particularly, Louis Althusser, et al., *Reading Capital*, tr. Ben Brewster (London, 1970).

⁴ Norman Holmes Pearson, "The Pynchons and Judge Pyncheon," *EIHC*, 4, (1964), 240.

⁵ George Parsons Lathrop, *Complete Works of Nathaniel Hawthorne* (Boston, 1898), 3:9.

⁶ Edmund Pearson, *Murder at Smutty Nose and Other Murders* (New York, 1938), p. 174.

⁷ Howard A. Bradley and James A. Winans, *Daniel Webster and the Salem Murder* (Columbia, Missouri, 1956), pp. 219, 10.

⁸ Gerald T. Dunne, *Justice Story and the Rise of the Supreme Court* (New York, 1970), p. 142. Further page references to Dunne will be included parenthetically within the text.

⁹ E. B. Hungerford, "Hawthorne Gossips about Salem," *NEQ*, 6 (1933), 455.

¹⁰ Lathrop, p. 9.

¹¹ Quoted in Perry Miller, *The Life of the Mind in America* (New York, 1965), pp. 226, 228.

¹² William Wetmore Story, 1:331.

¹³ Miller, p. 215.

¹⁴ Joseph Story, "History and Influence of the Puritans," in *The Miscellaneous Writings of Joseph Story*, ed. W. W. Story (Boston, 1852), p. 468.

¹⁵ James McClellan, *Joseph Story and the American Constitution* (Norman, 1971), pp. 280-281.

¹⁶ Henry Nash Smith, "The Morals of Power," in *Essays on American Literature*, ed. Clarence Gohdes (Durham, 1967), p. 96.

¹⁷ The preceding discussion relies heavily on Morton J. Horwitz, *The Transformation of American Law, 1780-1860* (Cambridge, Mass., 1977), pp. 31-62.

¹⁸ See Marvin Meyers, *The Jacksonian Persuasion: Politics and Belief* (Stanford, 1957), p. 179.

¹⁹ See Jonathan Arac's "The Politics of *The Scarlet Letter*," in *Ideology and American Literature*, ed. Sacvan Bercovitch and Myra Jehlen (New York, 1986).

²⁰ See Stephen Nissenbaum, "The Firing of Nathaniel Hawthorne," *EIHC*, 14 (1978), 57-86.

²¹ See Michael T. Gilmore, "The Artist and the Marketplace in *The House of the Seven Gables*," *ELH*, 48 (1981), 172-189.

²² Horwitz, pp. 48, 160-210.

²³ Cited in Michael T. Gilmore, "Emerson and the Persistence of the Commodity," in *Emerson: Prospect and Retrospect* (Cambridge, 1982), p. 71.

²⁴ Gilmore's entire discussion in "Emerson and the Persistence of the Commodity" is useful here.

²⁵ Miller, p. 148.

²⁶ Ralph Waldo Emerson, "The Fugitive Slave Law," in *The Portable Emerson*, ed. Carl Bode (New York, 1981), p. 541.

²⁷ Alexis de Tocqueville, *Democracy in America* (New York) 1:283.

²⁸ Fredric Jameson, *The Political Unconscious* (Ithaca, 1981), p. 148.

²⁹ See my discussion of the ending in *The House of the Seven Gables: Reading the Romance of America*, "PMLA", 97 (1982), 195-211.

³⁰ Jameson, p. 149-150.